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Clerk
District Court

SEP - 2 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**LARAMIE FEALTY, LLC,
Trustee of GET REALTY TRUST,

Plaintiff,

v.

UNITED MICRONESIA DEVELOPMENT
ASSOCIATION, INC., and DOES I-XX,

Defendants.

Civil Action No. 08-0028

**ORDER DENYING UMDA'S
MOTION TO DISMISS AND
GRANTING UMDA'S MOTION
TO STAY**

THIS MATTER came before the Court on August 28, 2008 at 8:00 am for hearing of Defendant's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, to stay the proceedings pursuant to the *Colorado River* doctrine or *Younger* abstention. Defendant United Micronesia Development Association, Inc. ("UMDA") appeared by and through its attorneys Mr. Robert J. O'Connor and Ms. Kathleen V. Fisher. Plaintiff appeared by and through its attorneys Mr. Colin M. Thompson and Mr. Gilbert Birnbrich. Having carefully reviewed the parties' briefs and the relevant legal authority, and having had the benefit of oral argument and good cause appearing, the Court hereby GRANTS the motion to stay and DENIES the motion to dismiss.

BACKGROUND

This case arises out of alleged unlawful corporate transactions and fraudulent conduct. UMDA is a development company that invests in various projects throughout Micronesia. (Request for Judicial Notice ("RJN"), Ex. 2 ¶ 1.)¹ In 2004, UMDA organized UMDA LaoLao

¹ Defendant requests that the Court take judicial notice of twenty-four documents that were filed in the CNMI Superior Court including a complaint, motions, memoranda in support of motions, and court orders. (RJN, Exs. 1-24.) The Court GRANTS the request with respect

1 LLC (“LaoLao LLC”). UMDA had a significant ownership interest in LaoLao LLC and was
 2 also the manager of the LLC. Plaintiff G.E.T. Realty Trust (“GET”) had a 35.7% ownership
 3 interest in LaoLao LLC. (Comp. ¶¶ 9–10.) In 2005, LaoLao LLC and UMDA purchased
 4 LaoLao Bay Golf Course.² In February of 2007, UMDA and LaoLao LLC entered into an
 5 agreement to sell the golf course. (RJN, Ex. 2 ¶¶ 60, 63.) UMDA management later distributed
 6 the proceeds from the sale to UMDA owners and some of the LaoLao LLC owners. (*See id.*, Ex.
 7 5 at 11.) UMDA asserts that it did not distribute all of the proceeds to all of the LaoLao LLC
 8 owners because it believed that such a distribution might be a breach of its fiduciary duty.
 9 Specifically, sometime between the time of the LLC formation and the purchase and sale of the
 10 golf course, UMDA became aware of an ongoing federal criminal investigation into alleged
 11 corporate misconduct of its CEO and other directors and/or officers. UMDA’s CEO eventually
 12 pled guilty to making false statements to federal authorities regarding his acceptance of side fees
 13 without the board’s consent during his tenure as CEO of UMDA. (*Id.*, Ex. 5 at 11.) UMDA
 14 believed that some of the LaoLao LLC members were involved in the alleged corporate
 15 misconduct and may have invested in the LLC with money that was misappropriated from
 16 UMDA. (*See id.* at 12.) Accordingly, UMDA management believed that it would be a breach of
 17 its fiduciary duty to pay proceeds to those owners.
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19 On April 26, 2007, UMDA and LaoLao LLC filed suit in the Commonwealth of the
 20 Northern Mariana Islands (“CNMI”) Superior Court against, among many others, GET and
 21 Thomas C. Sorenson as Trustee for GET. (*Id.*) The CNMI complaint asserted that the
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23
 24 to the documents’ authenticity but not with respect to the veracity of the documents’ content
 25 because only their authenticity is “capable of accurate and ready determination by resort to
 sources whose accuracy cannot be reasonably questioned.” *See* Fed. R. Evid. 201(b)(2).

26 ² The Court notes that this is an over-simplification of the corporate transactions. (*See*
 RJN, Ex. 5.) The recitation serves only as helpful background for purposes of this motion.

1 defendants gave UMDA illegal tax, accounting, and legal advice that violated various CNMI
2 laws. In addition, the complaint sought to determine the rightful owner of the undistributed
3 proceeds from the golf course sale. (*See id.*, Ex. 5 at 12.)

4 Shortly after the suit was initiated, the CNMI court froze three bank accounts that
5 contained the undistributed proceeds pending determination of the rightful owners. (*Id.*, Exs. 4
6 (TRO issued May 23, 2007), 5 (preliminary injunction granted November 13, 2007).) On
7 January 29, 2008, the court amended its preliminary injunction order and released almost a
8 million dollars of the frozen funds to UMDA lawyers. (*See id.*, Ex. 18 (Motion to Reconsider
9 Release of Funds).)

10 On April 8, 2008, Laramie Fealty LLC (“Laramie”) filed counterclaims and a third-party
11 complaint in the CNMI case as Trustee for GET. (*Id.*, Exs. 9, 10.) UMDA moved to dismiss the
12 counterclaims and third-party claims because Laramie was not a party to the suit. (Thompson
13 Decl., Ex. A.) Laramie contends that it replaced Mr. Sorenson as Trustee for GET on December
14 27, 2007. (Opp. at 4.) However, it appears that Mr. Sorenson remains the named defendant and
15 Trustee for GET in the CNMI case. In response to the motion to dismiss, Laramie voluntarily
16 withdrew its counterclaims and motion to dismiss.

17 Subsequently, Laramie filed suit in this Court on behalf of GET asserting the same claims
18 that it previously asserted as counterclaims and third-party claims in the CNMI case. The
19 complaint alleges that UMDA unlawfully distributed the proceeds from the sale of the golf
20 course in violation of LaoLao LLC’s operating agreement. Laramie seeks GET’s rightful
21 distribution from the sale as well as damages. The Court will discuss additional specific facts as
22 required in the analysis.
23

24 ANALYSIS

25 A. *Colorado River* Legal Standard.

26 Defendants argue that the Court should stay or dismiss this action based on the *Colorado*

1 River doctrine. Generally, “the pendency of an action in the state court is no bar to proceedings
 2 concerning the same matter in the Federal court having jurisdiction.” *Exxon Mobil Corp. v.*
 3 *Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005) (citations omitted). However, “[c]omity or
 4 abstention doctrines may, in various circumstances, permit or require the federal court to stay or
 5 dismiss the federal action in favor of the state-court litigation.” *Id.*

6 Under the *Colorado River* doctrine, a court may stay or dismiss a suit where another
 7 court has concurrent jurisdiction and principles of wise judicial administration counsel deference
 8 to the other proceeding. *Colorado River Water Conser. Dist. v. United States*, 424 U.S. 800, 817
 9 (1976). To determine whether a stay is warranted under the *Colorado River* doctrine, the Court
 10 should consider the following factors: (1) the inconvenience of the federal forum; (2) the
 11 desirability of avoiding piecemeal litigation; (3) the order in which jurisdiction was obtained; (4)
 12 considerations of wise judicial administration, giving due regard to conservation of judicial
 13 resources and comprehensive disposition of litigation; (5) similarity of the state and federal suits;
 14 (6) whether state or federal law controls; and (7) whether the state proceeding is adequate to
 15 protect the parties’ rights. *Id.* at 818–19; *Moses H. Cone Memorial Hosp. v. Mercury Const.*
 16 *Corp.*, 460 U.S. 1, 21, 25–26 (1983); *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir. 1989).
 17 No one factor is determinative and the Court should balance its “virtually unflagging” obligation
 18 to exercise jurisdiction with any combination of factors that might counsel against that exercise.
 19 *Colorado River*, 424 U.S. at 813, 818–19 (“[a]bstention from the exercise of federal jurisdiction
 20 is the exception, not the rule.”).

22 **B. A Stay Is Warranted Under *Colorado River*.**

23 Here, while neither forum is any more inconvenient than the other, all of the remaining
 24 factors weigh strongly in favor of a stay or dismissal under *Colorado River*. First, piecemeal
 25 litigation may result if this Court decides the issues before it. In the case before this Court,
 26 Laramie asserts that UMDA wrongfully withheld Laramie’s share of the profits from the sale.

1 Similarly, in the case before the Superior Court, UMDA seeks a determination of the rightful
2 owners of the profits from the sale. There is a significant chance that inconsistent judgments
3 would result were both courts to resolve the issues before them. *See Am. Intern. Underwriters*
4 *(Philippines), Inc. v. Continental Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1988) (“Piecemeal
5 litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and
6 possibly reaching different results.”).

7 Next, not only did the CNMI court obtain jurisdiction over this matter prior to this Court,
8 the CNMI “case has progressed far beyond this case, indicating that it would be highly
9 inefficient to allow the federal litigation to proceed.” *Nakash*, 882 F.2d at 1415. Plaintiff
10 Laramie argues that the timing of filing is not dispositive and the CNMI case has made little
11 progress in the year that it has been pending. However, at least some depositions have been
12 conducted in the CNMI case, the court has conducted hearings and listened to testimony
13 regarding the contested money, and the court has frozen those contested funds and issued an
14 extensive order on the subject. (*See* RJN, Ex. 5.) This is significantly more than has occurred in
15 this case, which amounts to only initial pleadings and the current motion.
16

17 In addition, it is clear to the Court that the case before it and the CNMI case are
18 substantially related. In the CNMI case, UMDA seeks the court’s assistance in determining the
19 rightful owners of the proceeds of a sale. In short, UMDA claims that it was harmed by some of
20 the persons/entities that otherwise may have been entitled to a distribution of the proceeds.
21 UMDA claims that those persons/entities that caused it harm are no longer rightful owners of the
22 proceeds. In the instant case, Plaintiff Laramie represents one of the entities accused by UMDA
23 of wrongful conduct. Laramie contends that UMDA wrongfully withheld those profits and now
24 asks this Court to assist it in recovering those profits. In essence, the issue before this Court is
25 but one of many also present in the CNMI case. There is no question that the cases are related.
26

Moreover, this Court's subject matter jurisdiction is based solely on diversity of citizenship and no other federal interests are implicated. Further, Plaintiff does not suggest "any reason why the [CNMI] court cannot adequately protect [its] rights." *Nakash*, 882 F.2d at 1415.

Finally, Plaintiff Laramie suggests that a stay under *Colorado River* is inappropriate where adjudication of the state case will not resolve all of the parties' claims. Laramie claims that it will effectively be left with no forum to assert its claims because UMDA objects to its ability to join the CNMI case. However, UMDA's objections to Laramie's intervention (or substitution) is not conclusive of Laramie's ability to join or substitute in as a party in that case. If Laramie, GET's current Trustee, is in fact denied the ability to represent GET's interest in a suit brought against GET, then the argument would be more persuasive. However, as the facts are today, UMDA's objections do not necessarily preclude Laramie's ability to properly represent GET in the CNMI case.

Accordingly, the Court finds that principles of "wise judicial administration and due regard for judicial resources" and comity counsel a stay in favor of the CNMI litigation.³

Accordingly, the Court GRANTS the motion to stay and DENIES the motion to dismiss and the case is hereby STAYED.

³ The Court notes that UMDA asks the Court to dismiss the entire action because it claims that each of the claims are compulsory counterclaims in the concurrent CNMI case. The Court does not agree for two reasons. First, as UMDA has noted, Plaintiff Laramie is not a named party in the CNMI case and therefore cannot be compelled to bring a compulsory counterclaim. Fed. R. Civ. P. 13(a)(1) ("[a] pleading must state as a counterclaim any claim that--at the time of its service--the pleader has against an opposing party if the claim . . . arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; . . .") (emphasis added). Second, there has been no judgment in the CNMI litigation and there is no evidence before the Court to indicate that the claims will not be or cannot still be brought in the CNMI litigation.

1 **CONCLUSION**

2 In sum, the Court finds that the relevant *Colorado River* factors weigh strongly in favor
3 of the instant claims being adjudicated in the concurrent CNMI action. Accordingly, the motion
4 to dismiss is DENIED and the motion to stay is GRANTED.

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7 **IT IS SO ORDERED.**

8 Dated: September 2, 2008

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11 ALEX R. MUNSON
12 UNITED STATES DISTRICT JUDGE
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